

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

STACEY L. HELTZEL,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 3:06-CV-0227 WCL
)	
DUTCHMEN MANUFACTURING, INC.,)	
)	
Defendant)	
)	

OPINION AND ORDER

Presently before the Court is Defendant, Dutchmen Manufacturing, Inc.'s ("Dutchmen's") "Motion for Partial Summary Judgment" filed on April 17, 2008. Plaintiff, Stacey Heltzel ("Heltzel") responded on April 22, 2008 to which Dutchmen replied on May 15, 2008. For the following reasons, Dutchmen's Motion for Partial Summary Judgment will be DENIED as MOOT.

DISCUSSION

The underlying facts of this case have been previously set forth in this Court's Order Denying the Defendant's Motion for Summary Judgment, [DE 49]. For purposes of this motion, it suffices to say that Heltzel brought suit alleging that Dutchmen violated FMLA, 29 U.S.C. § 2614(a)(1), because it did not immediately return her to work when she appeared on May 4, 2005, and instead terminated her because of her absences on May 2 and 3, 2005, which, she alleges should have been considered FMLA approved absences. As noted the undersigned denied summary judgment on that claim. In the present motion, Dutchmen seeks partial summary judgment on the issue of punitive damages as well as emotional distress damages contending that the FMLA does not specifically authorize either type damages. Heltzel does not dispute that the FMLA does not

allow for punitive or emotional distress damages, *see Hite v. Biomet*, 53 F.Supp.2d 1013, 1024 (N.D.IN 1999), but argues instead that Dutchmen's motion is untimely.¹ Heltzel further indicates, however, that she is not seeking either punitive damages or emotional distress damages. Rather, Heltzel asserts that she is "seeking only damages available to her under the FMLA, including compensatory damages, liquidated damages, and reasonable attorneys' fees and costs." (Resp. p. 2). Since Heltzel has represented that she is not seeking the particular damages for which Defendant has moved for partial summary judgment, those issues are MOOT and the Defendant's Motion for Partial Summary Judgment is DENIED.

SO ORDERED.

This 19th day of May, 2008.

s/ William C. Lee
United States District Court

¹Dutchmen did not seek leave to file a belated motion for summary judgment despite the passage of the dispositive motions deadline.